

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Aisha Sherman,
Plaintiff

Case No. 2:24-cv-00970-CDS-NJK

Order Granting Defendants' Motions to Dismiss

Eighth Judicial District Court, et al.,
Defendants

[ECF No. 12, 15, 19]

10 Plaintiff Aisha Sherman brings this employment dispute against the Eighth Judicial
11 District Court (“EJDC”) and Clark County alleging discrimination, retaliation, and violations of
12 the Americans with Disabilities Act (ADA). Compl., ECF No. 1. Both defendants separately
13 move to dismiss the complaint. EJDC’s Mot., ECF No. 12; Clark Cnty.’s Mot., ECF No. 15. EJDC
14 argues that (1) Sherman’s lack of standing and her failure to exhaust administrative remedies
15 extinguishes this court’s subject-matter jurisdiction; (2) it has Eleventh Amendment immunity
16 from Sherman’s Americans with Disabilities Act claims; and (3) Sherman failed to allege facts
17 stating claims for retaliation under either Title VII of the Civil Rights Act or the Americans with
18 Disabilities Act. ECF No. 12. Clark County moves to dismiss the complaint for failure to state a
19 claim, arguing that Sherman erroneously believes Clark County is her employer. ECF No. 15.
20 Sherman’s oppositions to both motions to dismiss were due on or before September 25, 2024.¹
21 As of the date of this order, no oppositions—or requests for additional time—have been filed, so
22 I grant the defendants’ motions to dismiss.

²⁵ See ECF No. 17; *see also* Local Rule 7-2(b) (stating that the deadline to file and serve any points and authorities in response to the motion—other than summary judgment—is 14 days after service of the motion). That 14-day period is extended to the next business day if the filing deadline falls on a legal holiday. Fed. R. Civ. P. 6(a)(1)(C).

1 I. Legal Standard

2 Unlike a motion for summary judgment, a district court is not required to examine the
 3 merits of an unopposed motion to dismiss before granting it. *Ghazali v. Moran*, 46 F.3d 52, 54 (9th
 4 Cir. 1995) (the Ninth Circuit refused to extend to motions to dismiss the requirement that a
 5 district court examine the merits of an unopposed motion for summary judgment before
 6 summarily granting it pursuant to a local rule). Thus, a district court may properly grant an
 7 unopposed motion to dismiss under a local rule. *Id.* at 53. Local Rule 7-2(d) provides that the
 8 failure of an opposing party to file points and authorities constitutes that party's consent to the
 9 granting of the motion. LR 7-2(d).

10 Before granting an unopposed motion to dismiss, the court must weigh the following
 11 factors: "(1) the public's interest in expeditious resolution of litigation; (2) the court's need to
 12 manage its docket; (3) the risk of prejudice to the defendant; (4) the public policy favoring
 13 disposition of cases on their merits; and (5) the availability of less drastic sanctions." *Ghazali*, 46
 14 F.3d at 53 (quoting *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986)).

15 II. Discussion

16 The first two factors, the public's interest in expeditiously resolving this litigation and
 17 the court's interest in managing its docket, weigh in favor of dismissing Sherman's claims
 18 against the EJDC and Clark County. Sherman has failed to respond to the motions to dismiss,
 19 even though an additional week has passed since the September 25, 2024, deadline. Sherman's
 20 non-compliance slows the expeditious resolution of this litigation by delaying the set briefing
 21 schedule and interferes with the court's ability to manage its docket. *T.G. v. Bd. of Trustees*, 2022
 22 U.S. Dist. LEXIS 133058, *5 (D. Mont. July 6, 2022) ("The Court cannot manage its docket if
 23 Plaintiffs do not respond to motions. . . [t]his case [] cannot proceed if Plaintiffs fail to
 24 participate."); see also *Yourish*, 191 F.3d 983, 990 (9th Cir. 1999) ("[D]ismissal . . . serves the public
 25 interest in expeditious resolution of litigation as well as the court's need to manage its docket
 26 because Plaintiffs' noncompliance has caused the action to come to a complete halt, thereby

1 allowing Plaintiffs to control the pace of the docket rather than the court.”) (quoting *Ash v.*
 2 *Cvetkov*, 739 F.2d 493, 496 (9th Cir. 1984)).

3 The third factor also weighs in favor of dismissing Sherman’s claims. There is no
 4 apparent risk of prejudice to defendants by dismissing the action at this time; indeed,
 5 defendants filed the instant motions to dismiss.

6 The fourth factor weighs against dismissing Sherman’s claims against EJDC and Clark
 7 County. That is because public policy favors disposing of cases on their merits. *See Hernandez v.*
 8 *City of El Monte*, 138 F.3d 393, 399 (9th Cir. 1998) (“[T]he public policy favoring resolution on the
 9 merits clearly counsels against dismissal.”) (citation omitted); *Pagtalunan v. Galaza*, 291 F.3d 639,
 10 643 (9th Cir. 2002) (“Public policy favors disposition of cases on the merits. Thus, this factor
 11 weighs against dismissal.”). However, this factor is not weighty here; the Ninth Circuit has
 12 “recognized that this factor ‘lends little support’ to a party whose responsibility it is to move a
 13 case toward disposition on the merits but whose conduct impedes progress in that direction.” *In*
 14 *re: Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 460 F.3d 1217, 1228 (9th Cir. 2006) (quoting *In re*
 15 *Exxon Valdez* 102 F.3d 429, 433 (9th Cir. 1996)). Here, Sherman did not file a response opposing
 16 the motions, making resolution on the merits difficult, if not impossible. *Cf. Johnson v. Top Inv. Prop.*
 17 *LLC*, 2018 U.S. Dist. LEXIS 140051, at *17–18 (E.D. Cal. Aug. 17, 2018) (“Although public policy
 18 generally favors the resolution of a case on its merits, as here, a defendant’s failure to appear and
 19 defend against a plaintiff’s claims makes a decision on the merits impossible.”) (citation
 20 omitted). And “a case that is stalled or unreasonably delayed by a party’s failure to comply with
 21 deadlines . . . cannot move forward toward resolution on the merits.” *In re PPA*, 460 F.3d at 1228.

22 Last, with respect to whether less drastic measures have been considered, the court has
 23 determined that dismissal without prejudice is proper here. *See Ash*, 739 F.2d at 496 (dismissal
 24 without prejudice is considered a lesser sanction and therefore is a “more easily justified
 25 sanction for failure to prosecute”); *see also Childers v. Arpaio*, 2009 WL 3756487 at *2 (D. Ariz.,
 26 Nov. 5, 2009) (dismissal without prejudice imposed as a “less drastic sanction” compared to

1 dismissal with prejudice). By dismissing the claims against without prejudice, Sherman remains
2 free to continue to pursue her claims, if necessary and appropriate, in a subsequent proceeding.
3 Accordingly, because the fifth factor also weighs in favor of dismissal, and because dismissal is
4 permitted under the local rules, I grant EJDC and Clark County's unopposed motions to dismiss.

5 **III. Conclusion**

6 It is therefore ordered that defendants' motions to dismiss [ECF Nos. 12, 15] are
7 GRANTED. It is further ordered that the Eighth Judicial District Court's motion to vacate the
8 ENE [ECF No. 19] and Clark County's joinder [ECF No. 20] are denied as moot. The Clerk of
9 Court is instructed to enter judgment accordingly and to close this case.

10 Dated: October 2, 2024

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13 Cristina D. Silva
United States District Judge

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